MONTANA LEGISLATIVE HISTORY

Chapter 302 19 89

Bill H 19 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 12	✓ C	Hearing Date(s)	Feb 07	✓ C
	Jan 15	✓ C		Mar 09	✓ C
	_____	____ C		_____	____ C
	_____	____ C		_____	____ C
Date Out	Jan 15	✓ C		Mar 09	✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

1/05	INTRODUCED		
1/05	REFERRED TO TAXATION		
1/05	FISCAL NOTE REQUESTED		
1/08	FISCAL NOTE RECEIVED		
1/13	HEARING		
1/14	COMMITTEE REPORT--BILL NOT PASSED		
1/15	ADVERSE COMMITTEE REPORT ADOPTED	90	7

HB 18 INTRODUCED BY BRADLEY
REVISING METHOD OF CHOOSING PRESIDENTIAL ELECTORS

1/05	INTRODUCED		
1/05	REFERRED TO STATE ADMINISTRATION		
1/07	HEARING		
1/07	COMMITTEE REPORT--BILL NOT PASSED		
1/08	ADVERSE COMMITTEE REPORT ADOPTED	76	17

HB 19 INTRODUCED BY MERCER
GENERAL REVISION OF LAWS RELATING TO PROPERTY EXEMPT FROM EXECUTION
BY REQUEST OF JOINT INTERIM SUBCOMMITTEE ON LIEN LAWS

1/05	INTRODUCED		
1/05	REFERRED TO JUDICIARY		
1/12	HEARING		
1/19	COMMITTEE REPORT--BILL PASSED AS AMENDED		
1/21	2ND READING PASSED AS AMENDED	88	11
1/22	3RD READING PASSED	92	3
	TRANSMITTED TO SENATE		
1/24	REFERRED TO JUDICIARY		
2/05	HEARING		
3/10	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/13	2ND READING CONCURRED AS AMENDED	50	0
3/16	3RD READING CONCURRED	49	1
	RETURNED TO HOUSE WITH AMENDMENTS		
3/20	2ND READING AMENDMENTS CONCURRED	87	8
3/21	3RD READING AMENDMENTS CONCURRED	86	10
3/24	SIGNED BY SPEAKER		
3/25	SIGNED BY PRESIDENT		
3/26	TRANSMITTED TO GOVERNOR		
3/31	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 302 EFFECTIVE DATE: 10/01/87		

HB 20 INTRODUCED BY HANSON, M.
CREATING AN INTERIM LEGISLATIVE COMMITTEE ON INDIAN AFFAIRS
BY REQUEST OF COMMITTEE ON INDIAN AFFAIRS

1/05	INTRODUCED		
1/05	REFERRED TO STATE ADMINISTRATION		
1/06	HEARING		
1/06	COMMITTEE REPORT--BILL PASSED		
1/08	2ND READING PASSED	88	6
1/08	REREFERRED TO APPROPRIATIONS		
1/16	HEARING		
3/19	COMMITTEE REPORT--BILL PASSED AS AMENDED		
3/25	2ND READING PASSED AS AMENDED	78	20
3/27	3RD READING PASSED	81	10
	TRANSMITTED TO SENATE		

HOUSE BILL NO. 19

INTRODUCED BY MERCER

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON LIEN LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION OF LAWS RELATING TO PROPERTY EXEMPT FROM EXECUTION; AMENDING SECTIONS 25-13-614, 70-32-104, 70-32-213, 70-32-214, 72-2-102, 72-2-205, 72-2-704, 72-2-705, 72-2-801 THROUGH 72-2-804, 72-3-101, 72-3-911, 72-3-1103, AND 72-3-1104, MCA; AND REPEALING SECTIONS 25-13-611 THROUGH 25-13-613, 25-13-616, AND 25-13-617, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Protection of property of residents. A resident of this state is entitled to the exemptions provided in this part.

NEW SECTION. Section 2. Claim enforceable against exempt property. Notwithstanding any other provision of this part, a creditor may levy against exempt property to enforce a claim for:

(1) the purchase price of the property; or

(2) a loan made for the express purpose of enabling the judgment debtor to purchase the property and used for that purpose.

NEW SECTION. Section 3. Property exempt without limitation. A judgment debtor is entitled to exemption from execution of the following:

(1) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;

(2) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation;

(3) veterans' benefits;

(4) disability or illness benefits;

(5) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;

(6) maintenance and child support; and

(7) a burial plot for the judgment debtor and his family.

NEW SECTION. Section 4. Personal property exempt subject to value limitations. A judgment debtor is entitled to exemption from execution of the following:

(1) the judgment debtor's interest, not to exceed $6,000 in aggregate value, to the extent of a value not exceeding $600 in any item of property, household furnishings and goods, appliances, jewelry, wearing apparel, books, animals, crops, and musical instruments;

(2) the judgment debtor's interest, not to exceed $3,500 in value, in one motor vehicle;

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(3) the judgment debtor's interest, not to exceed $3,000 in value, in any implements, professional books, or tools, of the trade of the judgment debtor or a dependent of the judgment debtor; and

(4) the judgment debtor's interest, not to exceed $4,000 in value, in any unmatured life insurance contracts owned by him.

NEW SECTION. Section 5. Tracing exempt personal property. (1) If money or other property exempt under [sections 3 and 4] has been sold or has been lost, damaged, or destroyed and the judgment debtor has been indemnified for it, he is entitled for 6 months to an exemption of proceeds that are traceable (for example, in a bank or savings account).

(2) Earnings exempt under 25-13-614 remain exempt for 45 days after receipt by and while in the possession of the judgment debtor in a form into which the exempt earnings are traceable (for example, in a bank or savings account).

(3) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor.

NEW SECTION. Section 6. Tracing homestead proceeds. (1) If property or a part thereof that could have been claimed as an exempt homestead has been sold or taken by

condemnation or has been lost, damaged, or destroyed and th owner has been indemnified for it, he is entitled for 1 months to exemption of the proceeds that are traceable.

(2) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor.

Section 7. Section 25-13-614, MCA, is amended to read:

"25-13-614. Earnings of judgment debtor. (1) ~~Except as provided in subsection (2), the earnings of the judgment debtor for his personal services rendered during the 45-day period prior to the levy of execution or attachment are exempt to the extent such earnings are necessary for the support of his family.~~

~~(2)~~ (a) No earnings are exempt unless the judgment debtor complies with 25-13-411.

~~(b) Earnings are exempt under this section from judgments or orders for maintenance or child support only to the extent allowed by 15 U.S.C. 1673.~~

~~(c) One-half of earnings are not exempt for debts incurred by the judgment debtor or his family for gasoline and the common necessaries of life.~~

~~(3) The words "his family", as used in this section, except to the extent that these words include a person covered by a judgment or order under subsection (2), are to~~

~~be construed to include:~~

~~(a) the judgment debtor's spouse;~~

~~(b) every person who resides with the judgment debtor under his care or maintenance and who is:~~

~~(i) a minor child of the judgment debtor or of his spouse or former spouse;~~

~~(ii) a minor grandchild, brother, or sister or minor child of a brother or sister of the judgment debtor or of his spouse;~~

~~(iii) a father, mother, grandfather, or grandmother of the judgment debtor or of his spouse or former spouse;~~

~~(iv) an unmarried sister, brother, or any other relative of the judgment debtor mentioned in this section who has attained the age of majority and is unable to care for or support himself.~~

(2) Except as provided in subsections (3) and (4), the maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subjected to garnishment may not exceed the lesser of:

(a) the amount by which his disposable earnings for the week exceed 30 times the federal minimum hourly wage in effect at the time the earnings are payable; or

(b) 25% of his disposable earnings for that week.

(3) The restrictions of subsection (2) do not apply in the case of an order or judgment for the maintenance or

support of any person, issued by a court of competent jurisdiction, or pursuant to an administrative procedure that is established by state law, affords substantial due process, and is subject to judicial review.

(4) (a) The maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subject to garnishment to enforce an order described in subsection (3) may not exceed:

(i) 50% of the judgment debtor's disposable earnings for that week if he is supporting his spouse or dependent child (other than a spouse or child for whom the order is issued); or

(ii) 60% of the judgment debtor's disposable earnings for that week if he is not supporting a spouse or dependent child described in subsection (4)(a)(i).

(b) However, the amount stated in (4)(a)(i) may be 55% and the amount stated in (4)(a)(ii) may be 65% if such earnings are being garnished to enforce an order for maintenance or support for a period prior to the 12-week period that ends with the beginning of such workweek.

(5) For the purposes of this section, the definitions of earnings, disposable earnings, and garnishment are as set forth in 15 U.S.C. 1672."

Section 8. Section 70-32-104, MCA, is amended to read:

"70-32-104. ~~Limitations~~ Limitation on quantity--and

value ~~which may be selected. (1) Homesteads may be selected and claimed consisting of:~~

~~(a) a quantity of land not exceeding 320 acres used for agricultural purposes and the dwelling house or mobile home thereon and its appurtenances and not included in any municipality;~~

~~(b) a quantity of land not in a municipality, not exceeding 1 acre and not used for agricultural or commercial purposes, and the dwelling house or mobile home thereon and its appurtenances; or~~

~~(c) a quantity of land within a municipality, not exceeding one fourth of an acre, and the dwelling house or mobile home thereon and its appurtenances.~~

~~(2)~~ Such ~~A~~ homestead ~~in either case, shall~~ may not exceed in value ~~the sum of~~ $40,000. ~~However, in~~ In any proceedings instituted to determine the value of such homestead, the assessed value of the land with included appurtenances, if any, and of the dwelling house as appears on the last completed assessment roll preceding the institution of such proceedings shall be prima facie evidence of the value of the property claimed as a homestead.

(2) If a claimant who is an owner of an undivided interest in real property claims a homestead exemption, he is limited to an exemption amount proportional to his

undivided interest."

Section 9. Section 70-32-213, MCA, is amended to read:

"70-32-213. Sale proceeds equal to exemption protected. The money paid to the claimant is entitled, for the period of 6 18 months thereafter, to the same protection against legal process and the voluntary disposition of either spouse which the law gives to the homestead."

Section 10. Section 70-32-214, MCA, is amended to read:

"70-32-214. Compensation of appraisers. The court must fix the a reasonable amount as compensation ~~of~~ for the appraisers ~~not to exceed $3 per day each for the time actually engaged~~."

Section 11. Section 72-2-102, MCA, is amended to read:

"72-2-102. Waiver of rights by spouse. The right of election of a surviving spouse and the rights of the surviving spouse to the homestead ~~allowance~~, exempt property, and family allowance or any of them may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all

rights to elective share, homestead ~~allowance~~, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement."

Section 12. Section 72-2-205, MCA, is amended to read:

"72-2-205. Requirement that heir survive decedent by one hundred twenty hours. Any person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of homestead ~~allowance~~, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir or the times of death of both cannot be determined and it cannot be established that the person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of intestate estate by the state under 72-2-207."

Section 13. Section 72-2-704, MCA, is amended to read:

"72-2-704. Effect of election on benefits by will or statute. (1) The surviving spouse's election of his elective share does not affect the share of the surviving spouse

under the provisions of the decedent's will or intestate succession unless the surviving spouse also expressly renounces in the petition for an elective share the benefit of all or any of the provisions. If any provision is so renounced, the property or other benefit which would otherwise have passed to the surviving spouse thereunder is treated, subject to contribution under 72-2-706(2), as if the surviving spouse had predeceased the testator.

(2) A surviving spouse is entitled to homestead ~~allowance~~, exempt property, and family allowance whether or not he elects to take an elective share."

Section 14. Section 72-2-705, MCA, is amended to read:

"72-2-705. Augmented estate. The augmented estate means the estate, reduced by funeral and administration expenses, homestead ~~allowance~~, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:

(1) the value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

(a) any transfer under which the decedent retained at

the time of his death the possession or enjoyment of or right to income from the property;

(b) any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade, or dispose of the principal for his own benefit;

(c) any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;

(d) any transfer made to a donee within 2 years of death of the decedent to the extent that the aggregate transfers to any one donee in any of the years exceed $3,000;

(2) any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.

(3) the value of property owned by the surviving spouse at the decedent's death, plus the value of property

transferred by the spouse at any time during marriage to an person other than the decedent which would have bee includable in the spouse's augmented estate if the survivin spouse had predeceased the decedent, to the extent the owne or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this subsection:

(a) property derived from the decedent includes but is not limited to any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance (including accidental death benefits) on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit, or retirement plan, exclusive of the federal social security system, by reason of service performed or disabilities incurred by the decedent, any property held at the time of

decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death, and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors are deemed to have been paid by the decedent.

(b) property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.

(c) property owned by the surviving spouse as of the decedent's death or previously transferred by the surviving spouse is presumed to have been derived from the decedent, except to the extent that the surviving spouse establishes that it was derived from another source.

(4) For the purposes of this section, a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim. Any recorded instrument is prima facie evidence that the transfer described therein was

made to a bona fide purchaser."

Section 15. Section 72-2-801, MCA, is amended to read:

"72-2-801. Homestead allowance. ~~(1) A surviving spouse of a decedent who was domiciled in this state is entitled to a homestead allowance of $20,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to $20,000, divided by the number of minor and dependent children of the decedent.~~

(1) (a) The personal representative may exercise the right to claim a homestead on behalf of a surviving spouse. If there is no surviving spouse, the personal representative may exercise the right on behalf of any minor child and any dependent child of the decedent, divided by the number of minor and dependent children of the decedent.

(b) (i) The homestead consists of the dwelling house or mobile home, and all appurtenances, in which the decedent resided and the land, if any, on which the residence is located.

(ii) The homestead may not exceed in value $40,000. In any proceedings instituted to determine the value of such homestead, the assessed value of the land with included appurtenances, if any, and of the dwelling house as appears on the last completed assessment roll preceding the institution of such proceedings is be prima facie evidence

of the value of the property claimed as a homestead.

(2) The homestead ~~allowance is exempt from and~~ has priority over all claims against the estate and is exempt from execution as provided in Title 70, chapter 32, part 2.

(3) ~~Homestead--allowance~~ The homestead is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share."

Section 16. Section 72-2-802, MCA, is amended to read:

"72-2-802. Exempt property. (1) In addition to the homestead ~~allowance~~, the surviving spouse of a decedent who was domiciled in this state is entitled from the estate to value not exceeding $3,500 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than $3,500 or if there is not $3,500 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $3,500 value.

(2) Rights to exempt property and assets needed to

make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of the homestead ~~allowance~~ and family allowance.

(3) These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share."

Section 17. Section 72-2-803, MCA, is amended to read:

"72-2-803. Family allowance. (1) In addition to the right to a homestead ~~allowance~~ and exempt property, if the decedent was domiciled in this state, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than 1 year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments.

(2) It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children, otherwise to the children or persons having their care and custody; but in case any minor child or dependent

child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody and partially to the spouse, as their needs may appear.

(3) The family allowance is exempt from and has priority over all claims but not over the homestead ~~allowance~~.

(4) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

(5) The death of any person entitled to family allowance terminates his right to allowances not yet paid."

Section 18. Section 72-2-804, MCA, is amended to read:

"72-2-804. Source, determination, and documentation. (1) If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as the homestead ~~allowance~~ and exempt property. The personal representative may make these selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal

representative may execute an instrument or deed of distribution to establish the ownership of property taken as the homestead ~~allowance~~ or exempt property. He may determine the family allowance in a lump sum not exceeding $6,000 or periodic installments not exceeding $500 per month for 1 year and may disburse funds of the estate in payment of the family allowance ~~and--any--part-of-the-homestead-allowance payable-in-cash~~.

(2) The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined."

Section 19. Section 72-3-101, MCA, is amended to read:

"72-3-101. Devolution of estate at death -- restrictions. (1) The power of a person to leave property by will and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates.

(2) Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them

in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates or, in the absence of testamentary disposition, to his heirs or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to the homestead ~~allowance~~, exempt property, and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration."

Section 20. Section 72-3-911, MCA, is amended to read:

"72-3-911. Successors' rights if no administration. (1) In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession.

(2) Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead ~~allowance~~, exemption, or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent.

(3) Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children and subject to the rights of others resulting from abatement, retainer, advancement, and ademption."

Section 21. Section 72-3-1103, MCA, is amended to

read:

"72-3-1103. Summary procedure for disbursement an distribution. If it appears from the inventory and appraisa that the value of the net distributable estate does no exceed $7,500 or the value of the entire estate, less lien and encumbrances, does not exceed the homestead ~~allowance~~, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in 72-3-1104."

Section 22. Section 72-3-1104, MCA, is amended to read:

"72-3-1104. Closing by sworn statement of personal representative -- termination of appointment. (1) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of 72-3-1103 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(a) to the best knowledge of the personal representative, the value of the net distributable estate

did not exceed $7,500 or the value of the entire estate, less liens and encumbrances, did not exceed the homestead ~~allowance~~, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

(b) the personal representative has fully administered the estate by payment of inheritance taxes and by disbursing and distributing it to the persons entitled thereto; and

(c) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

(2) If no actions or proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.

(3) A closing statement filed under this section has the same effect as one filed under 72-3-1004."

NEW SECTION. Section 23. Repealer. Sections 25-13-611 through 25-13-613, 25-13-616, and 25-13-617, MCA, are repealed.

NEW SECTION. Section 24. Codification instruction.

(1) Sections 1 through 5 are intended to be codified as an integral part of Title 25, chapter 13, part 6, and the provisions of Title 25, chapter 13, part 6, apply to sections 1 through 5.

(2) Section 6 is intended to be codified as an integral part of Title 70, chapter 32, part 2, and the provisions of Title 70, chapter 32, part 2, apply to section 6.

NEW SECTION. Section 25. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

NEW SECTION. Section 26. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
REPORT TO THE 50TH LEGISLATIVE SESSION

January 12, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on January 12, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO 13, Rep. Mercer, sponsor, submitted this bill by request of the joint interim subcommittee on lien laws. This bill amends section 31-2-106, MCA, to include as exempt property in a bankruptcy proceeding all property of an individual debtor exempt from execution of judgment as provided in the Montana Code Annotated. Rep. Mercer stated that this bill lays the ground work for who should have lien rights and who should not. The bankruptcy act did not exempt many items and it appeared many items were limited. This bill clarifies property exempt in bankruptcy proceedings when it is in an estate.

SUPPORTERS:

ROBERT C. PYFER, Vice President, Governmental Relations for the Montana Credit Unions League, feels this is a good bill.

No further supporters and no opponents.

REP. MERCER closed the hearing on HB #13.

HOUSE BILL NO. 19, Rep. Mercer sponsor, submitted this bill by request of the interim subcommittee on lien laws. This bill deals with the general revision of laws relating to property exempt from execution and repeals sections 25-13-611 through 25-13-613, 25-13-616, and 25-13-617, MCA. Rep. Mercer explained how this bill sets out procedure covering homesteads and estates. The bill removes many unfair, confusing and inequitable listings of specific exempt property and substitutes general categories with dollar limitations.

SUPPORTERS:

ROBERT C. PYFER, Vice President, Governmental Relations for the Montana Credit Unions League, submitted written testimony. (Exhibit A). He feels HB #19 represents a true modernization of archaic exemption laws but objected to the large dollar amounts that are set for certain categories of property. He submitted amendments. (Exhibit B). Mr. Pyfer

explained that generally, bankruptcy was governed by federal law and state legislature are prohibited from acting in this area. However, the federal law does allow the states to opt to use only their exempt property laws in bankruptcy proceeding in lieu of the federal bankruptcy code exemptions. If a state does not exercise this option, a debtor may choose either the federal exemptions or the state exemptions. The Montana state legislature can not do anything about the federal bankruptcy laws in general. However, it can act in this one area that affects bankruptcies. The legislature should attempt to alleviate or at least not aggravate the problem. Montana opted out of the federal exemptions because they were too liberal in 1981 by enacting Section 31-2-106, MCA. Mr. Pyfer submitted an exemption comparison table. (Exhibit C). He stated that this table shows that the study committee recommendations incorporated in HB #19 are much higher for certain categories than the federal bankruptcy code. He feels it does not make sense to go far beyond the federal bankruptcy code in 1987 just six short years after Montana opted out of the federal exemptions because they were too liberal. He stated also that the bankruptcy code and high exemptions hurt consumers and small business people because the availability of credit is affected. He feels that any major departure from the federal bankruptcy exemptions, which, again are themselves considered liberal, would create a serious imbalance between creditor and debtor.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 19:

REP. ADDY asked Mr. Pyfer why he was opposed to a life insurance policy as a cash value. Mr. Pyfer stated that he felt a life insurance policy should be limited to $2000.00 cash value because it was just another type of cash investment.

REP. HANNAH asked Mr. Pyfer if all the exemptions are net values after loans and he answered that they were.

REP. EUDAILY asked Rep. Mercer why jewelry was listed in such a high amount. Rep. Mercer answered that jewelry has a sentimental value and the value is greater for sentimental purposes.

REP. MERCER closed the hearing.

CHAIRMAN EARL LORY asked the committee to consider the amendments that have been submitted and asked Rep. Mercer to work with Mr. MacMaster on further amendments for HB #19.

EXECUTIVE SESSION:

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan. 13, 1987

NAME	PRESENT	ABSENT	EXCUSED
EARL LORY (R)	✓		
JOHN MERCER (R)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)		✓	✓
TOM BULGER (D)	✓		
JOHN COBB (R)	✓		
FRITZ DAILY (D)	✓		
PAULA DARKO (D)	✓		
RALPH EUDAILY (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
ED GRADY (R)	✓		
TOM HANNAH (R)	✓		
VERNON KELLER (R)	✓		
AL MYERS (R)	✓		
JOAN MILES (D)	✓		
PAUL RAPP-SVRCEK (D)	✓		
BILL STRIZICH (D)	✓		
JOHN McMASTER			

CS-30

EXHIBIT A
DATE 1-12-87
HB No. 19

HOUSE BILL 19

Testimony of Robert C. Pyfer
Vice President, Governmental Relations
Montana Credit Unions League

Before the House Judiciary Committee

January 12, 1987

Mr. Chairman and members of the committee, for the record I am Bob Pyfer, Vice President, Governmental Relations for the Montana Credit Unions League. The league is a trade association representing 109 of Montana's 111 credit unions.

We appear in support of HB 19, although we will be offering some amendments. We praise the work of the Interim Subcommittee on Lien Laws, as HB 19 represents a true modernization of our archaic exemption laws. The bill removes many unfair, confusing, and inequitable listings of specific exempt property and substitutes general categories with dollar limitations. We applaud this general approach to modernizing the existing law, but we must object to the large dollar amounts that are set for certain categories of property.

Generally, bankruptcy is governed by federal law, and state legislatures are prohibited from acting in this area. However, the federal law does allow the states to opt to use only their exempt property laws in bankruptcy proceedings in lieu of the federal bankruptcy code exemptions. If a state does not exercise this option, a debtor may choose either the federal exemptions or the state exemptions. The federal bankruptcy code exemptions are considered quite liberal among the states.

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HB #19

Indeed most states have opted out of the federal exemptions and for their own state exemptions because the federal exemptions are considered too liberal. The federal exemptions were most recently reviewed and updated by Congress in 1984.

Montana opted out of the federal exemptions because they were too liberal in 1981 by enacting Section 31-2-106, MCA. Please refer to the exemption comparisons table, which I have provided to the committee. As you can see from the table, the study committee recommendations incorporated in HB 19 are much higher for certain categories than the federal bankruptcy code. Does it make sense to go far beyond the federal bankruptcy code in 1987 just six short years (that were not inflationary years) after Montana opted out of the federal exemptions because those exemptions were too liberal? That is to say, Montana just recently opted out of the federal exemptions because they were too liberal--why are we now being asked to accept exemptions which are much higher than those liberal federal exemptions? There has been considerable reference to the Montana Constitution Article 13, Section 5, which speaks of liberal exemption laws. However, this is nothing new in the 1972 Constitution. The section is identical to Article 19, Section 4, of the 1889 Constitution except that the term "legislature" is substituted for "legislative assembly." In 1899 the Supreme Court in Yerrick V. Higgins, 22 Mont. 502,57P.95, stated that the legislature is free to establish the amounts of the exemptions and the mode of obtaining them. While this was not the main holding in the case, it does provide guidance that the legislature is not so constitutionally restricted in this area as some seem to think--

EXHIBIT A
DATE 1-12-87
HB #19

certainly it is not restricted to the extent of requiring exemption laws much more liberal than the federal code exemptions, which are considered liberal among the states. No cases have been cited where exemptions have been declared unconstitutional for not being sufficiently liberal. I don't believe anyone could seriously argue that our suggested amendments would not pass constitutional muster.

Furthermore, it is important to note that decisions rendered under this section of the Constitution call for liberal construction of the exemption laws in favor of the debtor. Therefore, anything that the legislature enacts in this area will be liberally interpreted in favor of the debtor.

Consumer financial cooperatives, like credit unions, can't stand heavy losses from bankruptcy because many credit unions are small and without large undivided earnings. Credit unions are directed by uncompensated volunteer directors. Losses don't just affect a select group of stockholders, but affect all consumer members of the credit union. Shares (deposits) are insured, but future services to members could be affected.

There is a general sense of frustration among credit union managers who encounter bankruptcies. Credit unions tend to try especially hard to accommodate members and so feel especially "burned" when a member files for bankruptcy.

A
DATE 1-12-87
HB #19

There is frustration in the fact that there is virtually no insolvency requirement for bankruptcy and that in order to reaffirm a debt to the credit union a member's attorney must approve the reaffirmation. High exemptions would merely serve to aggravate this frustration.

The bankruptcy code and high exemptions hurt consumers and small business people because the availability of credit is affected. Doug James, a Billings bankruptcy lawyer, gives the example that a non-purchase money security interest in exempt property is no good in a bankruptcy proceeding. He, therefore, advises his lender clients not to make such loans. Montana's present economy being what it is, now is not the time to further hamper availability of credit.

The Montana state legislature can't do anything about the federal bankruptcy laws in general. However, it can act in this one area that affects bankruptcies. The legislature should attempt to alleviate or at least not aggravate the problem. We therefore offer amendments to HB 19 which really do nothing more than avoid aggravating the existing frustration with bankruptcies. The amendments correspond exactly to the credit union league proposal found on the Exemption Comparisons table. You can see that our amendments are more in line with the federal bankruptcy code exemptions. We feel that any major departure from the federal exemptions, which, again are themselves considered liberal, would create a serious imbalance between creditor and debtor.

EXHIBIT A
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HB #19

Now I will make a few brief comments about each of our suggested amendments.

Motor vehicle -- The present law is $1,000. It was just raised in 1981 from $300. HB 19 would increase the exemption by well over 300% just 6 non-inflationary years after it was last increased. We suggest $1,200, the same as the federal code.

Personal, household possessions -- Our suggestion is basically equivalent to the federal code. We lump the federal code's $500 for jewelry into the general amount. However, our proposal would allow a $400 per item limit as opposed to the federal code's $200 per item limit.

Tools of trade -- We suggest $1,100, which is higher than the federal code, but we do not provide the $400 "floater" of the federal code.

Life insurance -- We suggest $2,000 for cash value. This is lower than the federal code. Insurance value of this type is more an investment than a death benefit. We feel such property does not merit special protection and should not be exempt at all. However, we would not object to exemption of death benefits where the debtor is a dependent of the insured. Such a provision does not appear to be included in the bill.

Homestead -- Our homestead exemption is among the very highest in the country. I believe it was mentioned during the study process that we are in

EXHIBIT A
DATE 1-12-87
HB #19

the top three states. We don't feel this comparatively high exemption is justified when the cost of real property in Montana is low as compared to other states.

Thank you for your attention and consideration. We urge you to view our amendments favorably. If there are any questions, I would be happy to try to answer them.

B
1-12-87
HB #19

House Bill No. 19

Proposed Amendments

1. Page 2, line 20.
   Following: line 19
   Strike: "$6,000"
   Insert: "$4,500"

2. Page 2, line 21.
   Following: "exceeding"
   Strike: "$600"
   Insert: "$400"

3. Page 2, line 25.
   Following: line 24
   Strike: "$3,500"
   Insert: "$1,200"

4. Page 3, line 2.
   Following: line 1
   Strike: "$3,000"
   Insert: "$1,100"

5. Page 3, line 6.
   Following: line 5
   Strike: "$4,000"
   Insert: "$2,000"

6. Page 7, line 15.
   Following: "~~sum of~~"
   Strike: "$40,000"
   Insert: "$30,000"

7. Page 14, line 20.
   Following: "value"
   Strike: "$40,000"
   Insert: "$30,000"

EXHIBIT C
DATE 1-12-87
HB Hb. 19

EXEMPTION COMPARISONS

	Study Committee Recommendation	Federal Bankruptcy Code	Credit Union League Proposal
Motor Vehicle	$3500	$1200	$1200
Personal, household possessions	$6000 but not more than $600 per item	$4000 but not more than $200 per item (plus $500 for jewelry)	$4500 but not more than $400 per item
Tools of trade	$3000	$ 750	$1100
Life insurance	Unmatured policy cash value $4000	Unmatured policy cash value $4000	Unmatured policy cash value $2000
Residence	Retain current $40,000 Homestead	$7500	Reduce Homestead to $30,000

Note: Bankruptcy Code allows additional "floating" $400 for any property

WITNESS STATEMENT

NAME Bob Ryser (see for HB 19) BILL NO. 13

ADDRESS _____ DATE _____

WHOM DO YOU REPRESENT? _____

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Bob Pyfer BILL NO. 19

ADDRESS 1236 Indiana Ave DATE 1/12/87

WHOM DO YOU REPRESENT? Mont. Credit Unions League

SUPPORT ✓ OPPOSE _____ AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 19: Rep. Mercer moved the amendments. (Exhibit C). Rep. Bulger opened discussion on the amendments by stating that if the point of this bill was to protect the homestead for the surviving spouse, can a spouse abandon the homestead and can the $40,000.00 be kept free and clear from debtors? Rep. Mercer stated that he wanted to expand the option and still protect the $40,000.00.

Question was called and a voice vote was taken with the amendments being approved unanimously.

Rep. Rapp-Svrcek moved to amend HB #19, the section dealing with tools of trade. (Exhibit D).

Rep. Gould asked Rep. Rapp-Svrcek if tools included the logger and his machinery. Rep. Rapp-Svrcek stated it would be at the court's discretion.

Rep. Bulger stated that he would be willing to support this if the amendment was worded differently.

Rep. Giacometto stated that it would be necessary for a farmer to keep his tractor in order to continue his trade and the wording in the amendment would be opening up too many decisions for the court to make.

Rep. Addy stated the farmer would fall under a different category. He spoke against the amendment by explaining in this area it is better to leave the law the way it is than to come up with non-specific limitations. As he sees it this is the problem with this bill. It is hard to let people know what what their rights are so they can conduct their business in that manner. It is either exempt or not exempt.

Rep. Grady also spoke against the amendment and agrees with what Rep. Addy had to say.

Rep. Rapp-Svrcek commented on a few points. He stated that in regard to the tractor, it is a secured interest in most cases and would not be covered. Tools on the other hand are very important for a person's means of support. This bill allows a court to take tools away. A person should not have to go out and borrow more money in order to buy new tools. He stated that it appears there is too much protection and support given to the lenders without regard for the people who are borrowing money.

John MacMaster explained that this amendment allows a person to continue in his present trade. A logger will be given a

certain amount of tools for his trade but the court says he must start all over from scratch.

Rep. Mercer supports what Rep. Addy says and states it is not a case between the big guy against the smaller guy. A person is given a minimum amount of things to hang on to but a line has to be drawn.

Rep. Daily supports Rep. Rapp-Svrcek's idea but states we do not have enough information to go on and the interim committee probably did.

Question was called and a voice vote was taken. All members except four voted against the amendment. The amendment failed.

Rep. Mercer pointed out that the amendment on page one of the original bill needed to be cleaned up. He asked that the word "in" be inserted in front of household furnishings. A voice vote was taken on this amendment and it carried unanimously.

Rep. Cobb requested that section four also be cleaned up by inserting the word "feed" between the words animals and crops. Question was called and a voice vote was taken and carried unanimously.

Rep. Grady moves to pass the amendments submitted by Bob Pyfer of the Montana Credit Union League. (Exhibit E). Rep. Mercer read the amendments and Chairman Earl Lory requested that the committee take each amendment one by one. Rep. Grady stated that he feels we have gone too liberal. The figures can be argued but there seems to be a bad management problem in businesses today and lending institutions must tighten up.

Rep. Hannah opposed these limitations. He stated that the whole idea behind the bankruptcy laws is to try and establish that we do not have a debtor's prison here in America. To strip everything from a person is like putting him in prison.

Rep. Brown agreed with Rep. Hannah's arguments.

Rep. Bulger stated that the exemptions may seem liberal but pointed out the homestead act had been cut in half at the last legislation.

Question was called and a voice vote was taken on the first two sections of the amendments submitted by Mr. Pyfer and the motion failed.

The motion was moved by Rep. Addy on section five. Rep. Mercer opposed the amendment. A voice vote was taken on the motion and two members voted in favor and all other members opposed. The motion failed.

Chairman Earl Lory called for a roll call vote on the amendments. (See roll call vote.) The amendments failed 6-12.

Rep. Cobb moved Do Pass on HB #19. Question was called and a voice vote was taken. Motion was approved by all members with the exception of four members who opposed. House Bill No. 19 DO PASS WITH AMENDMENTS.

ACTION ON HOUSE BILL #95: Rep. Addy moved Do Pass. Question was called and a voice vote was taken and HB #95 was unanimously passed.

ACTION ON HOUSE BILL #134: Rep. Addy moved Do Pass. Rep. Mercer moved that an amendment be made to the bill on page one, line 23, following the word "consent", insert: "in writing". A voice vote was taken to move as amended. Motion carried unanimously.

ADJOURN: A motion having been made and having been seconded, the meeting adjourned at 11:45 a.m.

Earl Lory

REP. EARL LORY, Chairman

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date January 15, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

January 15, 19 87

Mr. Speaker: We, the committee on JUDICIARY

report on House Bill No. 19

☒ do pass ☐ do not pass ☐ be concurred in ☐ be not concurred in ☒ as amended ☐ statement of intent attached

Chairman

Amendments to HB 19

1. Title, line 7.
Following: "25-13-614,"
Insert: "70-32-103,"
Following: "70-32-104,"
Insert: "70-32-106,"

2. Title, line 8.
Following: "70-32-214,"
Insert: "70-32-302,"

3. Page 2, line 21.
Following: "property,"
Insert: "in"

4. Page 2, line 23.
Following: "books,"
Insert: "firearms and other sporting goods,"
Following: "animals,"
Insert: "feed,"

5. Page 8, line 17.
Following: "spouse to"
Strike: "the homestead"
Following: "allowance"
Strike: ","

6. Page 8, line 18.
Following: "property"
Strike: ","

7. Page 9, line 1.
Following: "share,"
Strike: "homestead"
Following: "allowance"
Strike: ","

FIRST reading copy (WHITE color)

8. Page 9, line 11.
Following: "of"
Strike: "homestead"
Following: "allowance"
Strike: ","

9. Page 9, line 12.
Following: "property"
Strike: ","

10. Page 10, line 9.
Following: "to"
Strike: "homestead "

11. Page 10, line 10.
Following: "allowance"
Strike: ","
Following: "property"
Strike: ","

12. Page 10, line 15.
Following: "expenses,"
Strike: "homestead"
Following: "allowance"
Strike: ","

13. Page 14, line 3.
Following: "allowance"
Insert: "election"

14. Page 14, line 10 through line 1 on page 15,
Strike: subsection (1) in its entirety
Insert: "(1) If the spouse or a minor or dependent child survive the decedent by 120 hours the personal representative may declare a homestead on behalf of the decedent's estate pursuant to Title 70, chapter 32."

15. Page 15, lines 2 and 3.
Strike: " has" on line 2 through "all" on line 3
Insert: "is exempt from all unsecured "

16. Page 15, line 3.
Following: "and"
Strike: "is exempt"

17. Page 15, lines 5 through 9.
Strike: subsection (3) in its entirety

18. Page 15, lines 11 and 12.
Following: "(1)"
Strike: "In addition to the homestead"

19. Page 15, line 12.
Following: "allowance"
Strike: ", the"
Insert: "The"

20. Page 16, line 4.
Following: "the"
Strike: "homestead"

21. Page 16, line 5.
Following: "allowance"
Strike: "and"

22. Page 16, line 12.
Following: "to"
Strike: "a homestead"
Following: "allowance"
Strike: "and"

23. Page 17, line 6.
Following: "claims"
Strike: "but not over the homestead"

24. Page 17, line 18.
Following: "rights to" on line 17
Strike: "homestead and" on line 18

25. Page 17, line 21.
Following: "as"
Strike: "the homestead"
Following: "allowance"
Strike: "and"

26. Page 18, line 3.
Following: line 2
Strike: "the homestead" on line 3
Following: "allowance"
Strike: "or"

27. Page 19, line 6.
Following: "to"
Strike: "the homestead"

28. Page 19, line 7.
Following: "allowance"
Strike: ","
Following: "property"
Strike: ","

29. Page 19, line 17.
Strike: "homestead"
Following: "allowance"
Strike: ","
Following: "exemption"

Strike:

30. Page 20, line 6.
Following: "~~allowance~~"
Insert: "election"

31. Page 21, line 3,
Following: "~~allowance~~"
Insert: "election"

32. Page 21, following line 21.
Insert:

"Section 23. Section 70-32-103, MCA, is amended to read:

"70-32-103. From whose property homestead may be selected -- ~~declaration~~ declaration on behalf of decedent. (1) If the claimant ~~be~~ is married, the homestead may be selected from the property of either spouse. When the claimant is not married, the homestead may be selected from any of his or her property.

(2) For purposes of this chapter, the term "claimant" ~~includes a personal representative of a decedent's estate who under 72-2-801 declares a homestead on behalf of the estate.~~"

Section 24. Section 70-32-106, MCA, is amended to read:

"70-32-106. Contents of declaration. (1) The declaration of homestead must contain a statement that the person making it is residing on the premises and claims them as a homestead and a description of the premises.

(2) If the declaration of homestead is made by the personal representative on behalf of a decedent's estate under 72-2-801, it must contain:

(a) a description of the premises;

(b) a statement that the surviving spouse or minor or dependent child was residing on the premises at the time of the decedent's death; and

(c) a declaration that the personal representative is claiming the premises as a homestead."

Section 25. Section 70-32-302, MCA, is amended to read:

"70-32-302. How abandoned -- declaration. A homestead can be abandoned only by a declaration of abandonment or a grant thereof executed and acknowledged by: (1) the husband and wife if the claimant is married;

(2) the claimant if unmarried; or

(3) the personal representative if a declaration

strike the period.

is made on behalf of a decedent's estate under 72-2-801."

Renumber: subsequent sections

7016e/c:Jeanne2\WP:jj

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-15-87 BILL NO. 19 AMENDMENTS TIME

NAME	EXCUSED	AYE	NAY
JOHN MERCER			✓
LEO GIACOMETTO			✓
BUDD GOULD			✓
AL MEYERS		✓	
JOHN COBB			✓
ED GRADY		✓	
PAUL RAPP-SVRCEK			✓
VERNON KELLER		✓	
RALPH EUDAILY		✓	
TOM BULGER			✓
JOAN MILES		✓	
FRITZ DAILY			✓
TOM HANNAH			✓
BILL STRIZICH			✓
PAULA DARKO		✓	
KELLY ADDY			✓
DAVE BROWN			✓
EARL LORY			✓
TALLY		6	12

Renée D. Riddell
Secretary

Boyd Earl Lory
Chairman

MOTION: AMENDMENTS

EXHIBIT C
DATE 1-15-87
HB #19

50th Legislature LC 0281/01

HB BILL NO. 19
INTRODUCED BY REP MERCER
BY REQUEST OF THE INTERIM SUBCOMMITTEE ON LIEN LAWS
A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION OF LAWS RELATING TO PROPERTY EXEMPT FROM EXECUTION; AMENDING SECTIONS 25-13-614, 70-32-103, 70-32-104, 70-32-106, 70-32-213, 70-32-214, 70-32-302, 72-2-102, 72-2-205, 72-2-704, 72-2-705, 72-2-801 THROUGH 72-2-804, 72-3-101, 72-3-911, 72-3-1103, AND 72-3-1104, MCA; AND REPEALING SECTIONS 25-13-611 THROUGH 25-13-613, 25-13-616, AND 25-13-617, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. **Protection of property of residents.** A resident of this state is entitled to the exemptions provided in this part.

NEW SECTION. Section 2. **Claim enforceable against exempt property.** Notwithstanding any other provision of this part, a creditor may levy against exempt property to enforce a claim for:
(1) the purchase price of the property; or
(2) a loan made for the express purpose of enabling the judgment debtor to purchase the property and used for that purpose.

NEW SECTION. Section 3. **Property exempt without limitation.** A judgment debtor is entitled to exemption from execution of the following:
(1) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;
(2) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation;
(3) veterans' benefits;
(4) disability or illness benefits;
(5) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;
(6) maintenance and child support; and
(7) a burial plot for the judgment debtor and his family.

NEW SECTION. Section 4. **Personal property exempt subject to value limitations.** A judgment debtor is entitled to exemption from execution of the following:
(1) the judgment debtor's interest, not to exceed $6,000 in aggregate value, to the extent of a value not exceeding $600 in any item of property, household furnishings and goods, appliances, jewelry, wearing apparel, books, animals, crops, and musical instruments;

(2) the judgment debtor's interest, not to exceed $3,500 in value, in one motor vehicle;

(3) the judgment debtor's interest, not to exceed $3,000 in value, in any implements, professional books, or tools, of the trade of the judgment debtor or a dependent of the judgment debtor; and

(4) the judgment debtor's interest, not to exceed $4,000 in value, in any unmatured life insurance contracts owned by him.

NEW SECTION. Section 5. Tracing exempt personal property. (1) If money or other property exempt under [sections 3 and 4] has been sold or has been lost, damaged, or destroyed and the judgment debtor has been indemnified for it, he is entitled for 6 months to an exemption of proceeds that are traceable (for example, in a bank or savings account).

(2) Earnings exempt under 25-13-614 remain exempt for 45 days after receipt by and while in the possession of the judgment debtor in a form into which the exempt earnings are traceable (for example, in a bank or savings account).

(3) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor.

NEW SECTION. Section 6. Tracing homestead proceeds. (1) If property or a part thereof that could have been claimed as an exempt homestead has been sold or taken by condemnation or has been lost, damaged, or destroyed and the owner has been indemnified for it, he is entitled for 18 months to exemption of the proceeds that are traceable.

(2) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor.

Section 7. Section 25-13-614, MCA, is amended to read:

"25-13-614. Earnings of judgment debtor. (1) ~~Except as provided in subsection (2), the earnings of the judgment debtor for his personal services rendered during the 45-day period prior to the levy of execution or attachment are exempt to the extent such earnings are necessary for the support of his family.~~

~~(2)~~ (a) No earnings are exempt unless the judgment debtor complies with 25-13-411.

~~(b) Earnings are exempt under this section from judgments or orders for maintenance or child support only to the extent allowed by 15 U.S.C. 1673.~~

~~(c) One-half of earnings are not exempt for debts incurred by the judgment debtor or his family for gasoline and the common necessaries of life.~~

~~(3) The words "his family", as used in this section, except to the extent that these words include a person covered by a judgment or order under subsection (2), are to be construed to include:~~

~~(a) the judgment debtor's spouse;~~

EXHIBIT C
DATE 1-15-87
HB #19

~~(b)--every-person-who-resides-with-the-judgment-debtor-under his-care-or-maintenance-and-who-is:~~

~~(i)--a-minor-child-of-the-judgment-debtor-or-of-his-spouse or-former-spouse;~~

~~(ii)-a-minor-grandchild,-brother,-or-sister-or-minor-child of-a-brother-or-sister-of-the-judgment-debtor-or-of-his-spouse;~~

~~(iii)-a-father,-mother,-grandfather,-or-grandmother-of-the judgment-debtor-or-of-his-spouse-or-former-spouse;~~

~~(iv)-an-unmarried-sister,-brother,-or-any-other-relative-of the-judgment-debtor-mentioned-in-this-section-who-has-attained the-age-of-majority-and-is-unable-to-care-for-or-support-himself.~~

(2) Except as provided in subsections (3) and (4), the maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subjected to garnishment may not exceed the lesser of:

(a) the amount by which his disposable earnings for the week exceed 30 times the federal minimum hourly wage in effect at the time the earnings are payable; or

(b) 25% of his disposable earnings for that week.

(3) The restrictions of subsection (2) do not apply in the case of an order or judgment for the maintenance or support of any person, issued by a court of competent jurisdiction, or pursuant to an administrative procedure that is established by state law, affords substantial due process, and is subject to judicial review.

(4) (a) The maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subject to garnishment to enforce an order described in subsection (3) may not exceed:

(i) 50% of the judgment debtor's disposable earnings for that week if he is supporting his spouse or dependent child (other than a spouse or child for whom the order is issued); or

(ii) 60% of the judgment debtor's disposable earnings for that week if he is not supporting a spouse or dependent child described in subsection (4)(a)(i).

(b) However, the amount stated in (4)(a)(i) may be 55% and the amount stated in (4)(a)(ii) may be 65% if such earnings are being garnished to enforce an order for maintenance or support for a period prior to the 12-week period that ends with the beginning of such workweek.

(5) For the purposes of this section, the definitions of earnings, disposable earnings, and garnishment are as set forth in 15 U.S.C. 1672."

Section 8. Section 70-32-104, MCA, is amended to read:

"70-32-104. ~~Limitations~~ Limitation on quantity--~~and~~ value ~~which-may-be-selected~~. (1) ~~Homesteads-may-be-selected-and-claimed consisting-of:~~

~~(a)--a-quantity--of--land--not--exceeding--320--acres--used--for agricultural--purposes--and--the--dwelling--house--or--mobile--home thereon--and--its--appurtenances--and--not--included--in--any municipality;~~

~~(b)--a-quantity-of-land-not-in-a-municipality,-not-exceeding~~

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~~1-acre-and-not-used-for-agricultural-or-commercial-purposes,-and the-dwelling-house-or-mobile-home-thereon-and-its-appurtenances,~~ or

~~(c)--a-quantity-of-land-within-a-municipality,-not-exceeding one-fourth-of-an-acre,-and-the-dwelling-house-or-mobile-home thereon-and-its-appurtenances.~~

~~(2)~~--Such A homestead~~,-in-either-case,-shall~~ may not exceed in value ~~the-sum-of~~ $40,000. ~~However,--in~~ In any proceedings instituted to determine the value of such homestead, the assessed value of the land with included appurtenances, if any, and of the dwelling house as appears on the last completed assessment roll preceding the institution of such proceedings shall be prima facie evidence of the value of the property claimed as a homestead.

(2) If a claimant who is an owner of an undivided interest in real property claims a homestead exemption, he is limited to an exemption amount proportional to his undivided interest."

Section 9. Section 70-32-213, MCA, is amended to read:

"**70-32-213. Sale proceeds equal to exemption protected.** The money paid to the claimant is entitled, for the period of 6 18 months thereafter, to the same protection against legal process and the voluntary disposition of either spouse which the law gives to the homestead."

Section 10. Section 70-32-214, MCA, is amended to read:

"**70-32-214. Compensation of appraisers.** The court must fix ~~the~~ a reasonable amount as compensation of for the appraisers~~, not-to-exceed-$3-per-day-each-for-the-time-actually-engaged.~~"

Section 11. Section 72-2-102, MCA, is amended to read:

"**72-2-102. Waiver of rights by spouse.** The right of election of a surviving spouse and the rights of the surviving spouse to ~~the-homestead~~ ~~allowance,~~ exempt property~~,~~ and family allowance or any of them may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, ~~homestead~~ ~~allowance,~~ exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement."

Section 12. Section 72-2-205, MCA, is amended to read:

"**72-2-205. Requirement that heir survive decedent by one hundred twenty hours.** Any person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of ~~homestead~~ ~~allowance,~~ exempt property~~,~~ and intestate succession, and the decedent's heirs are determined

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accordingly. If the time of death of the decedent or of the person who would otherwise be an heir or the times of death of both cannot be determined and it cannot be established that the person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of intestate estate by the state under 72-2-207."

Section 13. Section 72-2-704, MCA, is amended to read:

"72-2-704. Effect of election on benefits by will or statute. (1) The surviving spouse's election of his elective share does not affect the share of the surviving spouse under the provisions of the decedent's will or intestate succession unless the surviving spouse also expressly renounces in the petition for an elective share the benefit of all or any of the provisions. If any provision is so renounced, the property or other benefit which would otherwise have passed to the surviving spouse thereunder is treated, subject to contribution under 72-2-706(2), as if the surviving spouse had predeceased the testator.

(2) A surviving spouse is entitled to ~~homestead allowance,~~ exempt property, ~~,~~ and family allowance whether or not he elects to take an elective share."

Section 14. Section 72-2-705, MCA, is amended to read:

"72-2-705. Augmented estate. The augmented estate means the estate, reduced by funeral and administration expenses, ~~homestead allowance,~~ family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:

(1) the value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

(a) any transfer under which the decedent retained at the time of his death the possession or enjoyment of or right to income from the property;

(b) any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade, or dispose of the principal for his own benefit;

(c) any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;

(d) any transfer made to a donee within 2 years of death of the decedent to the extent that the aggregate transfers to any one donee in any of the years exceed $3,000;

(2) any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate

any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.

(3) the value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includable in the spouse's augmented estate if the surviving spouse had predeceased the decedent, to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this subsection:

(a) property derived from the decedent includes but is not limited to any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance (including accidental death benefits) on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit, or retirement plan, exclusive of the federal social security system, by reason of service performed or disabilities incurred by the decedent, any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death, and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors are deemed to have been paid by the decedent.

(b) property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.

(c) property owned by the surviving spouse as of the decedent's death or previously transferred by the surviving spouse is presumed to have been derived from the decedent, except to the extent that the surviving spouse establishes that it was derived from another source.

(4) For the purposes of this section, a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim. Any recorded instrument is prima facie evidence that the transfer described therein was made to a bona fide purchaser."

Section 15. Section 72-2-801, MCA, is amended to read:

"72-2-801. Homestead ~~allowance~~ election. ~~(1) A surviving~~

~~spouse of a decedent who was domiciled in this state is entitled to a homestead allowance of $20,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to $20,000, divided by the number of minor and dependent children of the decedent.~~

~~(1) (a) The personal representative may exercise the right to claim a homestead on behalf of a surviving spouse. If there is no surviving spouse, the personal representative may exercise the right on behalf of any minor child and any dependent child of the decedent, divided by the number of minor and dependent children of the decedent.~~

~~(b) (i) The homestead consists of the dwelling house or mobile home, and all appurtenances, in which the decedent resided and the land, if any, on which the residence is located.~~

~~(ii) The homestead may not exceed in value $40,000. In any proceedings instituted to determine the value of such homestead, the assessed value of the land with included appurtenances, if any, and of the dwelling house as appears on the last completed assessment roll preceding the institution of such proceedings is be prima facie evidence of the value of the property claimed as a homestead.~~

(1) If the spouse or a minor or dependent child survive the decedent by 120 hours, the personal representative may declare a homestead on behalf of the decedent's estate pursuant to Title 70, chapter 32.

(2) The homestead ~~allowance is exempt from and has priority over all~~ is exempt from all unsecured claims against the estate and ~~is exempt~~ from execution as provided in Title 70, chapter 32, part 2.

~~(3) Homestead allowance~~ ~~The homestead is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.~~"

Section 16. Section 72-2-802, MCA, is amended to read:

"72-2-802. Exempt property. (1) ~~In addition to the homestead allowance, the~~ The surviving spouse of a decedent who was domiciled in this state is entitled from the estate to value not exceeding $3,500 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than $3,500 or if there is not $3,500 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $3,500 value.

(2) Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of the ~~homestead allowance and~~ family

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allowance.

(3) These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share."

Section 17. Section 72-2-803, MCA, is amended to read:

"72-2-803. Family allowance. (1) In addition to the right to ~~a homestead allowance and~~ exempt property, if the decedent was domiciled in this state, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than 1 year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments.

(2) It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children, otherwise to the children or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody and partially to the spouse, as their needs may appear.

(3) The family allowance is exempt from and has priority over all claims ~~but not over the homestead allowance~~.

(4) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

(5) The death of any person entitled to family allowance terminates his right to allowances not yet paid."

Section 18. Section 72-2-804, MCA, is amended to read:

"72-2-804. Source, determination, and documentation. (1) If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to ~~homestead and~~ exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as ~~the homestead allowance and~~ exempt property. The personal representative may make these selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as ~~the homestead allowance or~~ exempt property. He may determine the family allowance in a lump sum not exceeding $6,000 or periodic installments not exceeding $500 per month for 1 year and may disburse funds of the estate in payment of the family allowance ~~and any part of the homestead allowance payable in cash~~.

(2) The personal representative or any interested person aggrieved by any selection, determination, payment, proposed

payment, or failure to act under this section may petition the court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined."

Section 19. Section 72-3-101, MCA, is amended to read:

"72-3-101. Devolution of estate at death -- restrictions. (1) The power of a person to leave property by will and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates.

(2) Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates or, in the absence of testamentary disposition, to his heirs or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to ~~the homestead allowance,~~ exempt property, and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration."

Section 20. Section 72-3-911, MCA, is amended to read:

"72-3-911. Successors' rights if no administration. (1) In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession.

(2) Devisees may establish title by the probated will to devised property. Persons entitled to property by ~~homestead allowance,~~ exemption, or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent.

(3) Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children and subject to the rights of others resulting from abatement, retainer, advancement, and ademption."

Section 21. Section 72-3-1103, MCA, is amended to read:

"72-3-1103. Summary procedure for disbursement and distribution. If it appears from the inventory and appraisal that the value of the net distributable estate does not exceed $7,500 or the value of the entire estate, less liens and encumbrances, does not exceed the homestead ~~allowance~~ election, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in 72-3-1104."

Section 22. Section 72-3-1104, MCA, is amended to read:

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"72-3-1104. Closing by sworn statement of personal representative -- termination of appointment. (1) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of 72-3-1103 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(a) to the best knowledge of the personal representative, the value of the net distributable estate did not exceed $7,500 or the value of the entire estate, less liens and encumbrances, did not exceed the homestead ~~allowance~~ election, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

(b) the personal representative has fully administered the estate by payment of inheritance taxes and by disbursing and distributing it to the persons entitled thereto; and

(c) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

(2) If no actions or proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.

(3) A closing statement filed under this section has the same effect as one filed under 72-3-1004."

Section 23. Section 70-32-103, MCA, is amended to read:

"70-32-103. From whose property homestead may be selected -- declaration of homestead on behalf of decedent. (1) If the claimant ~~be~~ is married, the homestead may be selected from the property of either spouse. When the claimant is not married, the homestead may be selected from any of his or her property.

(2) For purposes of this chapter, the term "claimant" includes a personal representative of a decedent's estate who under 72-2-801 declares a homestead on behalf of the estate."

Section 24. Section 70-32-106, MCA, is amended to read:

"70-32-106. Contents of declaration. (1) The declaration of homestead must contain a statement that the person making it is residing on the premises and claims them as a homestead and a description of the premises.

(2) If the declaration of homestead is made by the personal representative on behalf of a decedent's estate under 72-2-801, it must contain:

(a) a description of the premises;

(b) a statement that the surviving spouse or minor or dependent child was residing on the premises at the time of the

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decedent's death; and

(c) a delaration that the personal representative is claiming the premises as a homestead."

Section 25. Section 70-32-302, MCA, is amended to read:

"70-32-302. How abandoned -- declaration. A homestead can be abandoned only by a declaration of abandonment or a grant thereof executed and ackowledged by:

(1) the husband and wife if the claimant is married;

(2) the claimant if unmarried~~.~~; or

(3) the personal representative if a delaration is made on behalf of a decedent's estate under 72-2-801."

NEW SECTION. Section 26. Repealer. Sections 25-13-611 through 25-13-613, 25-13-616, and 25-13-617, MCA, are repealed.

NEW SECTION. Section 27 . Codification instruction. (1) Sections 1 through 5 are intended to be codified as an integral part of Title 25, chapter 13, part 6, and the provisions of Title 25, chapter 13, part 6, apply to sections 1 through 5.

(2) Section 6 is intended to be codified as an integral part of Title 70, chapter 32, part 2, and the provisions of Title 70, chapter 32, part 2, apply to section 6.

NEW SECTION. Section 28. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

NEW SECTION. Section 29. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

Mercer

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Amendments to HB 19

1. Title, line 7.
Following: "25-13-614,"
Insert: "70-32-103,"
Following: "70-32-104,"
Insert: "70-32-106,"

2. Title, line 8.
Following: "70-32-214,"
Insert: "70-32-302,"

3. Page 8, line 17.
Following: "spouse to"
Strike: "the homestead"
Following: "~~allowance~~"
Strike: ","

4. Page 8, line 18.
Following: "property"
Strike: ","

5. Page 9, line 1.
Following: "share,"
Strike: "homestead"
Following: "~~allowance~~"
Strike: ","

6. Page 9, line 11.
Following: "of"
Strike: "homestead"
Following: "~~allowance~~"
Strike: ","

7. Page 9, line 12.
Following: "property"
Strike: ","

8. Page 10, line 9.
Following: "to"
Strike: "homestead "

9. Page 10, line 10.
Following: "~~allowance~~"
Strike: ","
Following: "property"
Strike: ","

10. Page 10, line 15.
Following: "expenses,"
Strike: "homestead"
Following: "~~allowance~~"

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Following: "rights to" on line 17
Strike: "homestead and" on line 18

23. Page 17, line 21.
Following: "as"
Strike: "the homestead"
Following: "~~allowance~~"
Strike: "and"

24. Page 18, line 3.
Following: line 2
Strike: "the homestead" on line 3
Following: "~~allowance~~"
Strike: "or"

25. Page 19, line 6.
Following: "to"
Strike: "the homestead"

26. Page 19, line 7.
Following: "~~allowance~~"
Strike: ","
Following: "property"
Strike: ","

27. Page 19, line 17.
Strike: "homestead"
Following: "~~allowance~~"
Strike: ","
Following: "exemption"
Strike: ","

28. Page 20, line 6.
Following: "~~allowance~~"
Insert: "election"

29. Page 21, line 3,
Following: "~~allowance~~"
Insert: "election"

30. Page 21. following line 21.
Insert:

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Strike: ","

11. Page 14, line 3.
Following: "~~allowance~~"
Insert: "election"

12. Page 14, line 10 through line 1 on page 15,
Strike: subsection (1) in its entirety
Insert: "(1) If the spouse or a minor or dependent child survives the decedent by 120 hours, the personal representative may declare a homestead on behalf of the decedent's estate pursuant to Title 70, chapter 32."

13. Page 15, lines 2 and 3.
Strike: " has" on line 2 through "all" on line 3
Insert: "is exempt from all unsecured "

14. Page 15, line 3.
Following: "and"
Strike: "is exempt"

15. Page 15, lines 5 through 9.
Strike: subsection (3) in its entirety

16. Page 15, lines 11 and 12.
Following: "(1)"
Strike: "In addition to the homestead"

17. Page 15, line 12.
Following: "~~allowance~~"
Strike: ", the"
Insert: "The"

18. Page 16, line 4.
Following: "the"
Strike: "homestead"

19. Page 16, line 5.
Following: "~~allowance~~"
Strike: "and"

20. Page 16, line 12.
Following: "to"
Strike: "a homestead"
Following: "~~allowance~~"
Strike: "and"

21. Page 17, line 6.
Following: "claims"
Strike: "but not over the homestead"

22. Page 17, line 18.

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Section 23. Section 70-32-103, MCA, is amended to read:
"70-32-103. From whose property homestead may be selected -- declaration on behalf of decedent. (1) If the claimant ~~be~~ is married, the homestead may be selected from the property of either spouse. When the claimant is not married, the homestead may be selected from any of his or her property.
(2) For purposes of this chapter, the term "claimant" includes a personal representative of a decedent's estate who under 72-2-801 declares a homestead on behalf of the estate."

Section 24. Section 70-32-106, MCA. is amended to read:
"70-32-106. Contents of delaration. (1) The delaration of homestead must contain a statement that the person making it is residing on the premises and claims them as a homestead and a description of the premises.
(2) If the declaration of homestead is made by the personal representative on behalf of a decedent's estate under 72-2-801, it must contain:
(a) a description of the premises;
(b) a statement that the surviving spouse or minor or dependent child was residing on the premises at the time of the decedent's death; and
(c) a declaration that the personal representative is claiming the premises as a homestead."

Section 25. Section 70-32-302, MCA, is amended to read:
"70-32-302. How abandoned -- declaration. A homestead can be abandoned only by a declaration of abandonment or a grant thereof executed and acknowledged by:
(1) the husband and wife if the claimant is married;
(2) the claimant if unmarried.; or
(3) the personal representative if a declaration is made on behalf of a decedent's estate under 72-2-801."

Renumber: subsequent sections

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Not Passed

AMENDMENT TO HB 19, INTRODUCED COPY, PROPOSED BY REP. RAPP-SVRCEK.

1. Page 3, line 1.
Strike: "not" through "value" on line 2
Insert: "to the extent found necessary by the court to continue his trade"

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House Bill No. 19 DO NOT PASS
12-6

Proposed Amendments

1. Page 2, line 20.
Following: line 19
Strike: "$6,000"
Insert: "$4,500"

2. Page 2, line 21.
Following: "exceeding"
Strike: "$600"
Insert: "$400"

3. Page 2, line 25.
Following: line 24
Strike: "$3,500"
Insert: "$1,200"

4. Page 3, line 2.
Following: line 1
Strike: "$3,000"
Insert: "$1,100"

5. Page 3, line 6.
Following: line 5
Strike: "$4,000"
Insert: "$2,000"

6. Page 7, line 15.
Following: "~~sum of~~"
Strike: "$40,000"
Insert: "$30,000"

7. Page 14, line 20.
Following: "value"
Strike: "$40,000"
Insert: "$30,000"

He said out of all his amendments, #19 is the only thing the bill needs. (see exhibit 2) He also presented from the Federal Register, a summary on the Federal rule on the minimum drinking age. (Exhibit 3)

DISCUSSION ON HOUSE BILL 21: Senator Crippen asked the proponents what they thought of the 19th Males' amendment. Representative Fritz said this was not offered in the House, so he had never seen it. Mr. Males said the Federal Register summary will show the amendment will comply with the federal rule. He said a "public place", which is in the 19th amendment is a defined term.

Valencia Lane explained some technical problems. She said sections 11-15 should not be in the bill. She said it would make the bill less complicated. J. Beck, Dept. of Highways, stated the Legislative Council drafted the bill.

Senator Blaylock asked if it bothers anyone that the bill is "nailing" a group that has better records in several areas, according to Mr. Males.

In closing, Representative Fritz said it did bother him that one group is getting hit hard.

CONSIDERATION OF HOUSE BILL 19: Representative John Mercer, House District 50, introduced HB 19. (Exhibit 4) He said it will bring the laws up to date. He mentioned the law now mentions oxes and carts in the liens provision. He explained each section.

PROPONENTS: Jeffry Kirkland, Montana Credit Union League, gave the committee written testimony in support of the bill. (Exhibit 5)

Meg Nelson, Northern Plains Resources, gave written testimony in support of the bill. (Exhibit 6)

OPPONENTS: Joe Brunner, Grange Assn., said in section 4, paragraphs 1, 2, 3, and 4 would not allow a farmer to be able to keep anything of value to maintain a business or job. She said on page 15, lines 5-8, the rationale of putting that in the bill doesn't make sense.

DISCUSSION ON HOUSE BILL 19: Senator Blaylock asked if the Grange Association would accept the bill if the values on page 4 were raised. Joe Brunner said yes, they would.

Senator Blaylock asked if the credit unions would be at a disadvantage if the values were increased to where they were. Mr. Kirkland said they would be, with regret. He said the values in the bill is all the credit unions can take.

Senator Mazurek asked why the probate code was discussed in the spouse's homestead election. Rep. Mercer replied he brought it up in the House Judiciary. He said if a thousand creditors were after him today, he could protect his homestead for $40,000, but if he dies, the protection dies with him. The House Judiciary Committee felt a man's children should have the right to inherit this protection. Senator Mazurek said it is not clear in the bill that we are playing with the spouse's elective share to the right of a homestead allowance. He asked if the State Bar section on Probate Code knows about this change in the probate law. Representative John Mercer said they didn't. Rep. Mercer said the Homestead allowance is a version of the Homestead Exemption.

In closing the hearing on House Bill 19, Rep. Mercer distributed a copy of the current law. (Exhibit 7)

CONSIDERATION OF HOUSE BILL 13: Representative John Mercer, House District 50, introduced the bill, which is by request of the Joint Interim Subcommittee on Lien Laws. (Exhibit 8)

PROPONENTS: Jeff Kirkland, Montana Credit Union League, supported the bill.

Cort Harrington, representing himself, presented amendments which will cover many more people and the amendments move the effective date from July 1, 1987, to the approval date of the bill by the legislature. (Exhibit 9) He gave an example of a man whose business failed. He pointed out that the man's wife's name was on the debts, so it brought all her assets into the bankruptcy. He said these amendments will help the people that get themselves in a bind with the bankruptcy laws.

Senator Severson, Senate District 32, supported the bill.

OPPONENTS: There were none.

DISCUSSION ON HOUSE BILL 13: Senator Bishop questioned why the bill doesn't exempt private retirement benefits. Rep. Mercer replied that problem covers the whole system.

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date Feb. 5, 1987

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

DATE (Feb.

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppo
Jeff Kirkland	Montana Credit Unions League	HB 13	✓	
Jeff Kirkland	" " " "	HB 19	✓	
[illegible]	[illegible]			X
Ken Morrison	DOR	HB170		X
[illegible]	MT. Assn	HB 21	✓	
[illegible]	DOH	HB21	✓	
MIKE MALES	SELF	HB 21		X
Curt Harrington	Self	HB13	✓	
M.F. "Micky" Nelson, Coroner	L&C Co. DUI Task Force	HB 21	—	
[illegible]	M M A	HB21	✓	
[illegible]	S. A. M.	HB21	✓	
[illegible]	self	HB21	✓	
[illegible]	self	HB21	✓	
[illegible]	self	HB.21		
[illegible]	MTRC	HB19	✓	

(Please leave prepared statement with Secretary)

SENATE JUDICIARY
EXHIBIT NO. 11
DATE Feb 5th, 1987
BILL NO. HB 19

SUMMARY HB19 (MERCER)

(Prepared by Senate Judiciary Committee staff)

HB19 is by request of the Joint Interim Subcommittee on Lien Laws and generally revises the laws relating to property exempt from execution.

The bill addresses the following areas:

Homestead exemption: There is no longer a homestead allowance for the surviving family but instead there is a homestead election on behalf of the estate (to be made by the personal representative). Repeals area limitation on homestead.

Wages and salaries: Conforms to federal law's provisions for exemption equal to 30 times federal minimum wage with garnishment allowed of lesser of 25% of disposable earnings or of the amount by which earnings exceed 30 times the minimum wage. Not a change from former state law, just sets federal law out in statute rather than just referring to federal statute.

Personal and Household Possessions: $6,000 aggregate but not more than $600 per item including all wearing apparel, wedding ring, and jewelry. Professionally prescribed health aids exempt without limit. Life insurance exempt up to $4,000 cash value in unmatured policy.

Tools of trade, implements: exempt up to $3,000 value.

Truck or automobile: one motor vehicle up to $1,200 value.

Tracing proceeds of sales: allow exemption of money identifiable as generated from the sale of exempt real property up to 18 months and from sale of exempt personal property for up to 6 months.

COMMENTS: None.

Title 25, ch. 13, part 6 -- property exempt from execution of judgment.

33-7-511 -- benefits from fraternal benefit societies.

33-15-512 through 33-15-514 --proceeds of group life and disability insurance and annuity contracts.

35-10-502 --partner's rights in specific partnership property.

39-51-3105 -- unemployment insurance benefits.

39-71-743 -- Workers' Compensation benefits.

39-73-110 -- Silicosis benefits.

53-2-607 -- Public assistance benefits.

53-9-129 -- Crime Victims' Compensation Act benefits.

Title 70, ch. 32 -- Homesteads.

80-2-245 -- Hail insurance benefits.

COMMENTS: None.

C:\LANE\WP\SUMHB13.

NAME: Jeffrey M. Kirkland DATE: 5 February 1987

ADDRESS: 2424 Teakwood Lane Helena

PHONE: 443-5546

REPRESENTING WHOM? Montana Credit Unions League

APPEARING ON WHICH PROPOSAL: HB 19

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY
EXHIBIT NO. 5
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BILL NO. HB 19

HOUSE BILL 19

TESTIMONY OF JEFFRY M. KIRKLAND

EXECUTIVE VICE PRESIDENT

MONTANA CREDIT UNIONS LEAGUE

BEFORE THE SENATE JUDICIARY COMMITTEE

5 FEBRUARY 1987

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, FOR THE RECORD I AM JEFF KIRKLAND, EXECUTIVE VICE PRESIDENT OF THE MONTANA CREDIT UNIONS LEAGUE. THE LEAGUE IS A TRADE ASSOCIATION REPRESENTING 108 OF MONTANA'S 110 CONSUMER-OWNED FINANCIAL COOPERATIVES, CREDIT UNIONS.

WE APPEAR IN SUPPORT OF HOUSE BILL 19 AS AMENDED AND PASSED BY THE HOUSE OF REPRESENTATIVES.

WE PRAISE THE WORK OF THE INTERIM STUDY COMMITTEE ON LIEN LAWS, THE MEMBERS OF WHICH MET NUMEROUS TIMES DURING THE INTERIM TO DEVELOP THE SUBSTANCE OF THE BILL YOU HAVE BEFORE YOU. HB 19 REPRESENTS A TRUE MODERNIZATION OF MONTANA'S ARCHAIC EXEMPTION LAWS.

THE BILL REMOVES MANY UNFAIR, CONFUSING, AND INEQUITABLE LISTINGS OF SPECIFIC EXEMPT PROPERTY AND SUBSTITUTES GENERAL CATEGORIES WITH DOLLAR LIMITATIONS. WE APPLAUD THIS APPROACH TO MODERNIZING THE EXISTING LAW.

WE DID HAVE SOME PROBLEMS WITH THE INTERIM STUDY COMMITTEE'S EXEMPTION AMOUNTS FOR EACH CATEGORY OF EXEMPTION BEING TOO HIGH. OUR RECOMMENDATION DURING THE STUDY PROCESS WAS THAT THE EXEMPTION AMOUNTS BE LESS THAN--OR CERTAINLY NO MORE THAN--EXEMPTION LIMITATIONS IN THE FEDERAL BANKRUPTCY CODE, LIMITATIONS THAT ARE CONSIDERED QUITE LIBERAL AMONG THE VARIOUS STATES.

IN FACT, MOST STATES HAVE OPTED OUT OF THE FEDERAL EXEMPTIONS AND FOR THEIR OWN EXEMPTIONS, BECAUSE THE FEDERAL

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EXEMPTIONS ARE CONSIDERED TOO LIBERAL. THOSE EXEMPTIONS WERE MOST RECENTLY REVIEWED AND UPDATED BY CONGRESS IN 1984.

GENERALLY, BANKRUPTCY IS GOVERNED BY FEDERAL LAW, AND STATE LEGISLATURES ARE PROHIBITED FROM ACTING IN THIS AREA--WITH ONE EXCEPTION. FEDERAL BANKRUPTCY LAW DOES ALLOW THE STATES TO OPT TO USE THEIR OWN EXEMPT PROPERTY LAWS IN BANKRUPTCY PROCEEDINGS IN LIEU OF THE FEDERAL BANKRUPTCY CODE EXEMPTIONS. AND, AS I MENTIONED, MOST STATES HAVE OPTED OUT OF THE FEDERAL EXEMPTIONS AND FOR THEIR OWN. THE MONTANA LEGISLATURE MADE THE DECISION TO DO SO IN 1981.

NEVERTHELESS, THE INTERIM STUDY COMMITTEE'S EXEMPTION LIMITATIONS CAME IN HIGHER THAN THOSE OF THE FEDERAL BANKRUPTCY CODE.

WE KNOW THAT THE BANKRUPTCY CODE AND HIGH EXEMPTIONS HURT CONSUMERS AND SMALL BUSINESS PEOPLE, BECAUSE THE AVAILABILITY OF CREDIT IS AFFECTED. DOUG JAMES, A BILLINGS BANKRUPTCY ATTORNEY, GIVES THE EXAMPLE THAT A NON-PURCHASE MONEY SECURITY INTEREST IN EXEMPT PROPERTY IS NO GOOD IN A BANKRUPTCY PROCEEDING. HE THEREFORE ADVISES HIS LENDER-CLIENTS NOT TO MAKE SUCH LOANS. MONTANA'S PRESENT ECONOMY BEING WHAT IT IS, WE FELT NOW IS NOT THE TIME TO FURTHER HAMPER THE AVAILABILITY OF CREDIT.

HOWEVER, ALTHOUGH WE OBJECTED TO THE HIGHER DOLLAR AMOUNTS PROPOSED BY THE INTERIM STUDY COMMITTEE, WE ALSO FELT THE BILL DID A GENERALLY GOOD JOB OF MODERNIZING EXISTING LAW

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AND PROVIDING A GENERALLY POSITIVE SOLUTION TO A PROBLEM THE LEGISLATURE HAS ATTEMPTED TO ADDRESS SINCE 1981--WITH TWO EXCEPTIONS: THE EXEMPTION LIMITATIONS FOR PERSONAL HOUSEHOLD ITEMS AND FOR MOTOR VEHICLES.

HB 19 WAS AMENDED IN THE HOUSE TO RECTIFY THOSE TWO CATEGORIES WHICH WE FELT WERE THE MOST TROUBLESOME. AND ALTHOUGH THE EXEMPTION AMOUNTS FOR PERSONAL HOUSEHOLD GOODS, TOOLS OF THE TRADE, AND THE HOMESTEAD ARE STILL HIGHER THAN THOSE OF THE FEDERAL BANKRUPTCY CODE, WE FEEL THE BILL AS AMENDED IN AND PASSED BY THE HOUSE IS A GOOD BILL AND ONE THAT WE CAN WHOLEHEARTEDLY SUPPORT.

WHY HAVE MONTANA'S CREDIT UNIONS TAKEN SUCH A HIGH PROFILE IN THE PROCESS? THERE IS A GENERAL SENSE OF FRUSTRATION AMONG CREDIT UNIONS THAT ENCOUNTER BANKRUPTCIES. CREDIT UNIONS TRY ESPECIALLY HARD TO ACCOMMODATE MEMBERS WHO ARE HAVING FINANCIAL DIFFICULTIES. THAT'S BECAUSE THEIR MEMBERS ARE ALSO THEIR OWNERS.

CREDIT UNIONS ARE DIRECTED BY UNCOMPENSATED VOLUNTEER DIRECTORS WHO ARE ELECTED BY THE MEMBER-OWNERS. LOSSES DON'T JUST AFFECT A SELECT GROUP OF STOCKHOLDERS. LOSSES AFFECT ALL CONSUMER-MEMBERS OF THE CREDIT UNION BY DEPLETING UNDIVIDED EARNINGS AND CAPITAL. SUCH LOSSES COULD DRASTICALLY AFFECT FUTURE SERVICES TO MEMBERS.

UNDER THE FEDERAL BANKRUPTCY CODE, THERE IS VIRTUALLY NO INSOLVENCY REQUIREMENT FOR BANKRUPTCY. AND TO REAFFIRM A DEBT

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TO THE CREDIT UNION, THE DEBTOR'S ATTORNEY MUST APPROVE THE REAFFIRMATION. HIGH EXEMPTIONS SERVE TO AGGRAVATE THIS FRUSTRATION.

NEVERTHELESS, WE FEEL THE "GIVE AND TAKE" OF THE LEGISLATIVE PROCESS HAS CREATED A BILL THAT ACCOMPLISHES MUCH IN STRIKING A BALANCE BETWEEN THE RIGHTS OF CONSUMERS IN FINANCIAL DIFFICULTIES AND THOSE OF CREDITORS TRYING TO MAINTAIN THE THE OPTIMUM IN FINANCIAL SERVICES AND THE AVAILABILITY OF CREDIT FOR THOSE CONSUMERS.

THE MONTANA CREDIT UNIONS LEAGUE AND OUR 108 MEMBER CREDIT UNIONS RESPECTFULLY URGE THIS COMMITTEE'S CONCURRENCE WITH HOUSE BILL 19.

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For the record,

Chairman, Members of the committee.

I'm in support of HB 19.

I'm Mg Nelson, testifying on behalf

of Northern Plains Resource Council.

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We commend the work of the Interim Subcommittee

on lien laws for their work on revising

what were in many instances, antiquated

laws relating to property exempt from

execution.

I like to address Section 4, which deals with the value

limitations on property exempt from

execution. Originally the committee allowed

in exemption of $6,000 in aggregate value ~~[illegible]~~

and a $3,500 value in 1 motor vehicle.

These values were Amended on the

floor to $4,500 and $1,200 respectively.

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We believe that as ~~the~~ these value limitations are too low. ~~And therefore~~ we urge the committee to amend this bill to reflect the original value limitations as ~~set~~ sit by the Interim ~~Committee~~ Subcommittee. ~~We also urge the committee to eliminate the $600 value limitation set for any one item.~~

~~Mr. Chairman's~~

our major concern deals with section 4 part (3) which limits the judgment debtor's interest to $3,000 in any implements, professional books or tools of the trade. ~~of the judgment debtor.~~ The idea behind having personal property exempt from execution is to enable a person to remain or get back on his feet after the execution of a judgment. $3000 is ~~an~~ an unreasonably low figure ~~to effectuate~~ to achieve this goal. depending on the profession

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~~Makes the ability of~~

~~tools~~

~~It effectively takes the~~

~~tool of trade~~ A $3000 value limitation

~~is~~ effectively eliminates the judgment debtor's ability to ~~keep~~ exempt tools of the trade ~~is~~ thus eliminating the ability of the judgment debtor to produce income and ~~become productive parts~~ emerge from the bankruptcy or foreclosure as a productive member of society.

Current law generally provides allows a judgment debtor the implements, professional books or tools of [illegible]

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to carry on his profession.

We urge the committee to strike the $3000 value limitation in this section and substitute it with flexible language which would enable the judgment officer to continue his profession.

Thank you

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Sheriffs' retirement benefits exempt from execution, 19-7-705.

Game Wardens' retirement benefits exempt from execution, 19-8-805.

Police retirement benefits exempt from execution, 19-9-1006, 19-10-504.

Firefighters' retirement benefits exempt from execution, 19-11-612.

Exempt property not passed by general assignment, 31-2-227.

Fraternal benefit society payments exempt from execution, 33-7-511.

What partnership interest not subject to attachment, 35-10-502.

Cooperative share exempt from execution, 35-15-404.

Nonliability of members of rural cooperative utilities for debts of cooperative, 35-18-302.

Cemetery association property exempt from execution, 35-20-217.

Unemployment insurance benefits exempt from execution, 39-51-3105.

Workers' compensation benefits not liable for debts, 39-71-743.

Hail insurance benefits exempt from execution, 80-2-245.

25-13-601. Waiver of exemptions in unsecured note unenforceable. Any waiver of statutory exemption from execution in an unsecured promissory note shall be unenforceable.

History: En. Sec. 1, Ch. 172, L. 1965; R.C.M. 1947, 93-5813.1.

Cross-References

Uniform Commercial Code — commercial paper, Title 30, ch. 3.

25-13-602. Repealed. Sec. 6, Ch. 210, L. 1985.

History: En. Sec. 1, Ch. 120, L. 1933; re-en. Sec. 9430.1, R.C.M. 1935; R.C.M. 1947, 93-5819.

25-13-603 through 25-13-610 reserved.

25-13-611. Necessary household property. (1) The following property is exempt from execution, except as herein otherwise provided:

(a) all wearing apparel of the judgment debtor and family;

(b) all chairs, tables, desks, and books to the value of $200;

(c) all necessary household, table, and kitchen furniture of the judgment debtor, including one sewing machine, stoves, stovepipes, and stove furniture, heating apparatus, beds, bedding, and bedsteads, and provisions and fuel provided for individual or family use sufficient for 3 months;

(d) 1 horse, saddle, and bridle; 2 cows and their calves; 4 hogs; 50 domestic fowls, and feed for such animals for 3 months;

(e) one clock; and

(f) all family pictures.

(2) None of the property mentioned in this section is exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage lien thereon, and no person not a bona fide resident of this state shall have the benefit of these exemptions.

History: En. Sec. 1, Ch. 8, L. 1905; re-en. Sec. 6824, Rev. C. 1907; amd. Sec. 1, Ch. 232, L. 1921; re-en. Sec. 9427, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 690; re-en. Sec. 9427, R.C.M. 1935; R.C.M. 1947, 93-5813; amd. Sec. 1, Ch. 210, L. 1985.

Compiler's Comments

1985 Amendment: Deleted former (2) that read: "An unmarried person who is not the head of a family is not entitled to any of the exemptions herein mentioned, except that of the wearing apparel of the judgment debtor."

25-13-612. Property necessary to carry on trade or profession. (1) In addition to the property mentioned in 25-13-611, there shall be exempt to all judgment debtors the following property:

(a) to a farmer: farming utensils or implements of husbandry, not exceeding in value $600; two oxen or two horses or mules and their harness, one cart or wagon, set of sleds, and food for such oxen, horses, cows, or mules for 3 months; all seed, grain, or vegetables actually provided or on hand for the purpose of planting or sowing the following spring, not exceeding in value $200;

(b) to a mechanic or artisan: tools or implements necessary to carry on his trade;

(c) to a surgeon, physician, or dentist: the instruments and chest necessary to the exercise of his profession, with his scientific and professional libraries and necessary office furniture;

(d) to attorneys at law and ministers of the gospel, etc.: the professional libraries of attorneys, counselors, judges, ministers of the gospel, editors, schoolteachers, and music teachers and their necessary office furniture; the musical instruments of music teachers; the notarial seal, records, and office furniture of a notary public;

(e) to a miner: his cabin or dwelling, sluices, and pipes, hose, windlass, derricks, cars, pumps, tools, implements, and appliances necessary for carrying on any kind of mining operations, not exceeding in value the aggregate sum of $1,000; and one horse or mule with harness and food for such horse or mule for 3 months, when such horse or mule is used in working his mine or mining claim;

(f) to a civil, mining, or mechanical engineer: instruments, tools, books, and records necessary to carry on his profession;

(g) to a chemist or assayer: the tools, instruments, and supplies necessary to carry on his profession;

(h) to a cartman, hackman, huckster, peddler, teamster, or laborer: one horse or mule and harness for two animals or two oxen and harness, and one cart or wagon, one dray or truck, one hack or carriage by the use of which such person habitually earns his living;

(i) one vehicle and harness or other equipment used by a physician or surgeon or minister of the gospel in making his professional visits, with food for such horse, mule, or oxen for 3 months;

(j) to an osteopath or chiropractor: the instruments and equipment necessary to the exercise of his profession, with his scientific and professional library and necessary office furniture.

(2) No article, however, or species of property mentioned in this section is exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage lien thereon, and no person not a bona fide resident of this state shall have the benefit of these exemptions. No person can claim more than one of the exemptions mentioned in subsections (1)(a) through (1)(i) of this section.

History: Ap. p. Sec. 1222, C. Civ. Proc. 1895; amd. Sec. 2, Ch. 8, L. 1905; re-en. Sec. 6825, Rev. C. 1907; re-en. Sec. 9428, R.C.M. 1921; re-en. Sec. 9428, R.C.M. 1935; Sec. 93-5814, R.C.M. 1947; Ap. p. Sec. 1, Ch. 127, L. 1937; re-en. Sec. 9428.1, R.C.M. 1935; Sec. 93-5815, R.C.M. 1947; R.C.M. 1947, 93-5814(part), 93-5815; amd. Sec. 2, Ch. 210, L. 1985.

Compiler's Comments

1985 Amendment: Near beginning of (1) after "judgment debtors", deleted "who are married or who are heads of families".

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(b) every person who resides with the judgment debtor under his care or maintenance and who is:

(i) a minor child of the judgment debtor or of his spouse or former spouse;

(ii) a minor grandchild, brother, or sister or minor child of a brother or sister of the judgment debtor or of his spouse;

(iii) a father, mother, grandfather, or grandmother of the judgment debtor or of his spouse or former spouse;

(iv) an unmarried sister, brother, or any other relative of the judgment debtor mentioned in this section who has attained the age of majority and is unable to care for or support himself.

History: En. Sec. 1222, C. Civ. Proc. 1895; re-en. Sec. 6825, Rev. C. 1907; amd. Sec. 1, Ch. 48, L. 1913; re-en. Sec. 9429, R.C.M. 1921; amd. Sec. 1, Ch. 3, L. 1933; re-en. Sec. 9429, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1939; R.C.M. 1947, 93-5816; amd. Sec. 7, Ch. 370, L. 1981; amd. Sec. 1, Ch. 153, L. 1983; amd. Sec. 1, Ch. 538, L. 1985.

Compiler's Comments

1985 Amendment: In (1) substituted present language for "Except as provided in this section, the earnings of the judgment debtor for his personal services rendered at any time within 45 days next preceding the levy of execution or attachment, when it appears by the debtor's affidavit or otherwise that such earnings are necessary for the use of his family supported in whole or in part by his labor, are exempt"; inserted (2)(a); in (2)(b) after "Earnings" deleted "for personal services"; and substituted present (2)(c) for former (3) that read: "Whenever debts are incurred by any such person or his wife or family for gasoline and for the common necessaries of life, then the one-half of such earnings are nevertheless subject to execution, garnishment, and attachment to satisfy debts so incurred."

1983 Amendment: At beginning of (1), inserted exception clause; at end of (1), deleted "but where"; inserted (2) (now (2)(b)); at beginning of (3) (now (2)(c)), inserted "Whenever"; and in (4) (now (3)), inserted exception clause referring to (2).

1981 Amendment: Substituted (2) (now (3)) for "the words "his family", as used in this section, are to be construed with the words "head of family", as used in 70-32-102."

25-13-615. Homestead. The homestead of a judgment debtor exempt from execution is provided for in Title 70, chapter 32.

History: En. Sec. 1223, C. Civ. Proc. 1895; re-en. Sec. 6826, Rev. C. 1907; re-en. Sec. 9430, R.C.M. 1921; re-en. Sec. 9430, R.C.M. 1935; R.C.M. 1947, 93-5818.

25-13-616. Life insurance benefits. (1) In addition to the property mentioned in 25-13-611, there shall be exempt to all judgment debtors all moneys, benefits, privileges, or immunities accruing or in any manner growing out of any life insurance on the life of the debtor if the annual premiums paid do not exceed $500.

(2) No article, however, or species of property mentioned in this section is exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage lien thereon, and no person not a bona fide resident of this state shall have the benefit of these exemptions.

History: En. Sec. 1222, C. Civ. Proc. 1895; amd. Sec. 2, Ch. 8, L. 1905; re-en. Sec. 6825, Rev. C. 1907; re-en. Sec. 9428, R.C.M. 1921; re-en. Sec. 9428, R.C.M. 1935; R.C.M. 1947, 93-5814(part); amd. Sec. 4, Ch. 210, L. 1985.

Compiler's Comments

1985 Amendment: Near beginning of (1) after "judgment debtors", deleted "who are married or who are heads of families".

25-13-617. Truck or automobile. (1) In addition to all other exemptions, one truck or automobile of the value of not more than $1,000 is exempt from attachment or execution; but where debts are incurred by any such

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debtor or his wife or family for the common necessaries of life, then such truck or automobile is nevertheless subject to attachment and execution to satisfy debts so incurred.

(2) The words "his family", as used in this section, are to be construed to include:

(a) the debtor's spouse;

(b) every person who resides with the debtor under his care or maintenance and who is:

(i) a minor child of the debtor or of his spouse or former spouse;

(ii) a minor grandchild, brother, or sister or minor child of a brother or sister of the debtor or of his spouse;

(iii) a father, mother, grandfather, or grandmother of the debtor or of his spouse or former spouse;

(iv) an unmarried sister, brother, or any other relative of the debtor mentioned in this section who has attained the age of majority and is unable to care for or support himself.

History: En. Sec. 2, Ch. 120, L. 1933; re-en. Sec. 9430.2, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1941; R.C.M. 1947, 93-5820; amd. Sec. 8, Ch. 370, L. 1981; amd. Sec. 5, Ch. 210, L. 1985.

Compiler's Comments

1985 Amendment: Near middle of (1) after "is exempt *from* attachment or execution", deleted "where the debtor is the head of a family or over 60 years of age".

1981 Amendment: Increased the auto exemption from $300 to $1,000 in (1); substituted (2) for "The words "his family", as used in this section, are to be construed with the words "head of family", as used in 70-32-102."

Part 7

Sale on Execution

Part Cross-References

Return of damaged property for sale by officer, 27-17-404.

Sale of attached property, Title 27, ch. 18, part 8.

Warranty upon judicial sale, 30-11-222.

Sale of abandoned vehicles in manner of sale on execution, 61-12-404.

25-13-701. Notice of sale on execution. (1) Before the sale of the property on execution, notice thereof must be given as follows:

(a) in case of perishable property, by posting written notice of the time and place of the sale in three public places of the township or city where the sale is to take place, for such time as may be reasonable considering the character and condition of the property;

(b) in case of other personal property, by posting a similar notice in three public places in the township or city where the sale is to take place, for not less than 5 days or more than 10 days, and by publishing a copy of the notice at least 1 week before the sale in a newspaper of general circulation published in the county, if there be one;

(c) in case of real property, by posting a similar notice, particularly describing the property, for 20 days in three public places of the township or city where the property is situated and also where the property is to be sold, which may be either at the courthouse or on the premises, and publishing a copy thereof once a week for the same period in some newspaper published in the county, if there be one, which notice shall be substantially as follows:

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less than $500 and no jail time. Senator Mazurek asked what offenses are we talking about here. Mr. Schunk said most of the offense in Title 61, which is the traffic code, have some jail time. He said the motor vechile code offense also include jail time.

Representative Harry Fritz closed on the bill.

The committee adjourned for executive action.

ACTION ON HB 53: Valencia gave the committee the amendment that would strike that repealer that leaves the maintainance of the Old Supreme Court Chambers unfunded (see Exhibit 10). Senator Crippen moved the amendment. The motion CARRIED. Valencia felt section 110 on page 166 should be looked at more carefully, so the committee held on action on the bill.

ACTION ON HB 19: Senator Mazurek said the bill will change the probate code for surving spouses with the homestead allowance act. He said it will make sure they get at least $20,000 off the top. Senator Bishop said that Mercer had some problems with that money coming right off the top of the estate. Senator Bishop explained that a Mr. Dave Johnson is the best in the business as far as the probate code and he said the committee should leave it alone. Senator Bishop moved the amendments presented by Valencia (the first three amendments and the last amendment in the Standing Committee Report). The amendments CARRIED. Senator Halligan moved on page 3, line 2 to strike $1,200 and insert $2,500. The motion CARRIED. Senator Yellowtail moved to strike on page 2, line 21 $4,500 and insert $6,000. The motion CARRIED. Senator Yellowtail still felt the bill doesn't do anything for the farmer. Senator Halligan moved the bill BE CONCURRED IN AS AMENDED. The motion CARRIED with Senators Pinsoneault and Yellowtail voting no (see Exhibit 11).

The committee adjourned at 12:00 p.m.

Chairman

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date March 9

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

SENATE JUDICIARY
EXHIBIT NO. 11
DATE March 9 198
BILL NO HB 19

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Attorney-at-Law

Legal Department (406) 721-2841
Collection Department (406) 721-2846

February 18, 1987

Senator Richard Pinsoneult
Senate District 27
Helena, MT 59620

Dear Senator Pinsoneult,

I would like to bring to your attention House Bill 366, a bill that proposes to increase the amount of homestead exemption from $40,000 to $80,000. This exemption was increased in 1981 from $20,000 to $40,000 to compensate for the cost of living increase; an action that perhaps was justifiable at that time due to real estate value increases of the 1970's. Currently, however, the value of homes in Montana is deteriorating. $40,000 is already more equity than most people have in their homes. A judgment already means very little to creditors. An increase in exemption would serve no purpose other than further protecting debtors in bankruptcy and upon execution, regardless of creditors' rights for compensation.

If approved, this law would render almost 100 percent of collection judgments uncollectible even upon the sale of a valuable house with much equity. Debtors would be free to leave the state with $80,000 from the sale of their home without paying judgment creditors.

I would also like to comment on House Bill 19. Although it increases the auto exemption from $1,000 to $3,500, it also includes a new $3,000 value limitation on implements and tools of trade. I submit that this $3,000 limitation is essential. Previously, there has been no limitation on this category and, as a result, debtors were allowed to claim large assets, such as semi-trucks, as exempt in bankruptcy and upon execution. Oftentimes, debtors' attorneys purposely structure their clients' assets to take advantage of such unlimited exemptions. Such "conversion" of assets is generally not considered a violation of federal bankruptcy laws.

I submit that the pendulum has swayed far enough to protect debtors at the expense of creditors. Currently, people with outstanding judgments or those just coming out of bankruptcy often have substantially better cash flow and net worth than people who choos to pay their bills. The more money lost due to non-payers, the more has to be paid by the payers to keep the services, such as hospitals, alive. Somebody has to pay. More liberal exemptions simply encourage more non-payment and more bankruptcies, which are already at an all time high.

Sincerely,

H. John Balyeat

STANDING COMMITTEE REPORT

March 9 19 87

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 19

Third reading copy (blue color)

General revision of laws relating to property exempt from execution.
Mercer (Thayer)

Respectfully report as follows: That HOUSE BILL No. 19

1. Title, line 7.
Strike: "70-32-103,"

2. Title, line 8.
Strike: "70-32-106,"
Following: "70-32-213,"
Insert: "AND"

3. Title, lines 8 through 10.
Following: "70-32-214," on line 8
Strike: the remainder of line 8 through "72-3-1104," on line 10

4. Page 2, line 21.
Following: "$6,800"
Strike: "$4,500"
Insert: "$6,000"

5. Page 3, line 2.
Following: "$3,500"
Strike: "$1,200"
Insert: "$2,500"

6. Page 8, line 16 through page 23, line 16.
Strike: sections 11 through 25 in their entirety
Renumber: subsequent sections

~~XXXXXXX~~ ~~DO PASS~~ AND AS AMENDED

~~XXXXXXXXXX~~ ~~DO NOT PASS~~ BE CONCURRED IN

Senator Hazurek Chairman.